



US Army Corps  
of Engineers  
Honolulu District

# Public Notice

Regulatory Branch (1145b)  
Building 230  
Fort Shafter, Hawaii 96858-5440

Public Notice Date: May 9, 2013  
Expiration Date: June 10, 2013  
Permit File Number: POH-2012-00241

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## **NOTICE OF PROPOSED REGULATION AMENDMENT FOR NEW DANGER ZONE AT BARKING SANDS ISLAND OF KAUAI, HAWAII**

The purpose of this notice is to provide the public with information regarding establishment of a new danger zone in the waters of the Pacific Ocean at Barking Sands, Island of Kauai, Hawaii.

**APPLICANT:** Commander, Kekaha Range Facility

**LOCATION:** Pacific Ocean off the Hawaii Army National Guard Range Facility, Barking Sands, Island of Kauai, Hawaii

**TIMEFRAME:** The proposed amendment to 33 CFR Part 334, described in this notice, is being published in the Federal Register, dated May 9, 2013. If approved, this rule would become effective on August 9, 2013, 30 days after publication of the Public Notice of the final decision.

**GENERAL INFORMATION:** Danger zone and restricted area regulations are promulgated by the U.S. Army Corps of Engineers (Corps) in response to requests made by other Department of Defense agencies. Danger zones are defined as water areas used for target practice, bombing, rocket firing or other especially hazardous operations, normally for the armed forces. Restricted areas are defined as water areas set aside for the purpose of limiting or prohibiting public access to the area. Restricted areas generally provide security for Government property and protection to the public from the risks of damage or injury from the Government's use of the area. Danger zones and restricted areas may be closed to the public on a full time or intermittent basis, as stated in the regulations.

**PROJECT PURPOSE AND DESCRIPTION:** The Kekaha Range Facility is a small arms qualification range. Hazard protection for the public is necessary because of the potential for bullets fired at the range to enter the area offshore of the range. The range is used for approximately 6-8 hours a day at 6-8 days per month. The amendment will serve to protect the general public from injury or property damage during routine firing operations at the facility.

Therefore, the Corps is amending the regulations at 33 CFR Part 334 to incorporate changes described below. In order to view the full Federal Register notice please go to <http://www.regulations.gov>. It may take up to a minute for this page to open. In the "SEARCH for:" search window (located near the center of the page), please enter [INSERT DOCKET No.], then click the "Search" button. Depending on many variables, it may take several minutes for the search results to be shown. You may click on the title of the proposed rule to be taken to another page where you can choose to view the proposed rule document.

For the reasons set out above, the Corps proposes to amend 33 CFR Part 334 as follows:

#### PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3)

2. Add § 334.1395 to read as follows:

§ 334.1395 Pacific Ocean off the Kekaha Range Facility at Barking Sands, Island of Kauai, Hawaii; danger zone.

(a) The danger zone. All waters within the area bounded by a line connecting the following coordinates: beginning at a point on the shore at latitude 21°58'45" N, longitude 159°45'32" W; thence easterly along the shoreline (shoreline is defined as the mean high water line and is coterminous with the federal property line) to a point at latitude 21°58'33" N, longitude 159°44'57" W; thence southeasterly to a point at latitude 21°55'39" N, longitude 159°43'36" W; thence northwesterly to a point at latitude 21°57'50" N, longitude 159°48'54" W; thence to point of beginning. All coordinates reference 1983 North American Datum (NAD 83).

(b) The regulations. (1) Weapons firing at the Kekaha Range Facility (KRF) may occur at any time between 7:00 a.m. and 6:00 p.m., Monday through Sunday. Specific dates and hours for weapons firing, along with information regarding onshore warning signals, will be promulgated by the U.S. Coast Guard's Local Notice to Mariners. Information on weapons firing schedules may also be obtained by calling the KRF Facility Manager, NGHI-OPS-TNG (G3) at 808-844-6731.

(2) Whenever live firing is in progress during daylight hours, two large red triangular warning pennants will be flown at each of two highly visible and widely separated locations on the shore at the KRF.

(3) Whenever any weapons firing is scheduled and in progress during periods of darkness, flashing red warning beacons will be displayed on the shore at the KRF.

(4) Boaters will have complete access to the danger zone whenever there is no weapons firing scheduled, which will be indicated by the absence of any warning flags, pennants, or beacons displayed ashore.

(5) The danger zone is not considered safe for boaters whenever weapons firing is in progress. Boaters shall expeditiously vacate the danger zone at best speed and by the most direct route whenever weapons firing is in progress. Weapons firing will be suspended as long as there is a vessel in the danger zone. Whenever a boater disregards the publicized warning signals that hazardous weapons firing is in progress, the boater will be personally requested to expeditiously vacate the danger zone by KRF personnel hailing the vessel on VHF channel 16 or contacting the vessel directly by surface craft.

(6) Observation posts will be manned whenever any weapons firing is scheduled and in progress. Visibility will be sufficient to maintain visual surveillance of the entire danger zone and for an additional distance of 5 miles in all directions whenever weapons firing is in progress.

c) *The enforcing agency.* The regulations shall be enforced by the Commanding Officer, Kekaha Range Facility, Hawaiian Area, Barking Sands, Kauai, Hawaii and such agencies or persons as he or she may designate.

### **IMPACTS OF PROPOSED ACTIVITIES IF AUTHORIZED:**

The operations and safety procedures would essentially remain unchanged. Bullets generated by the use of small arms may be discharged into the water areas of the danger zone. However, the cumulative effects associated with the proposed danger zone are considered negligible and are not expected to adversely or permanently impact existing benthic fauna and other marine species that utilize or colonize the Pacific Ocean waters and substrate in the area off Barking Sands, Kauai, Hawaii, proposed for the new danger zone. Other adverse impacts would be minimal, including the temporary disruption of boating traffic in the area from operational activities.

### **IMPACT ON HISTORIC PROPERTIES:**

The action area for the proposed activity consists of the expanded area of the danger zone, as depicted in the attached figure/map. The Hawaii and National Register of Historic Places do not list any historic properties within the area for the undertaking. Therefore, the Corps has determined that the areas of direct and indirect impact from the expansion of the danger zone will not impact any historic properties listed, or eligible for listing, on the Hawaii and National Registers of Historic Places.

This notice has been sent to the State Historic Preservation Officer, the State Office of Hawaiian Affairs, Hui Malama I Na Kupuna O Hawaii Nei, and the Aha Moku Council. Any comments they have regarding historic properties and cultural resources will be meaningfully considered before a final decision is made on the DA regulation.

### **IMPACT ON ENDANGERED SPECIES:**

Pursuant to Section 7 of the Endangered Species Act (ESA), the Corps has determined that the proposed addition of this danger zone would result in no effect on federally listed species. Potential impacts to protected marine species are expected to be unlikely in the waters of the danger zone. The threatened green sea turtle (*Chelonia mydas*), endangered hawksbill turtle (*Eretmochelys imbricata*), humpback whale (*Megaptera novaengliae*), and Hawaiian monk seal (*Monachus schauinslandi*) may transit through or near the area, but are not expected to be indirectly or directly impacted by operational activities.

This notice has been transmitted to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Any comments they have on endangered or threatened species, or designated critical habitat, will be meaningfully considered before a final decision is made on the proposed amendment.

### **OTHER GOVERNMENT AUTHORIZATIONS/CERTIFICATIONS:**

Prior to a decision on the proposed amendment, the applicant may be required to obtain a Coastal Zone Management (CZM) Program consistency determination, or waiver from the State of Hawaii Office of Planning. Other State and local approvals which may be required would be the responsibility of the Commander, Kekaha Range Facility.

## **EVALUATION FACTORS:**

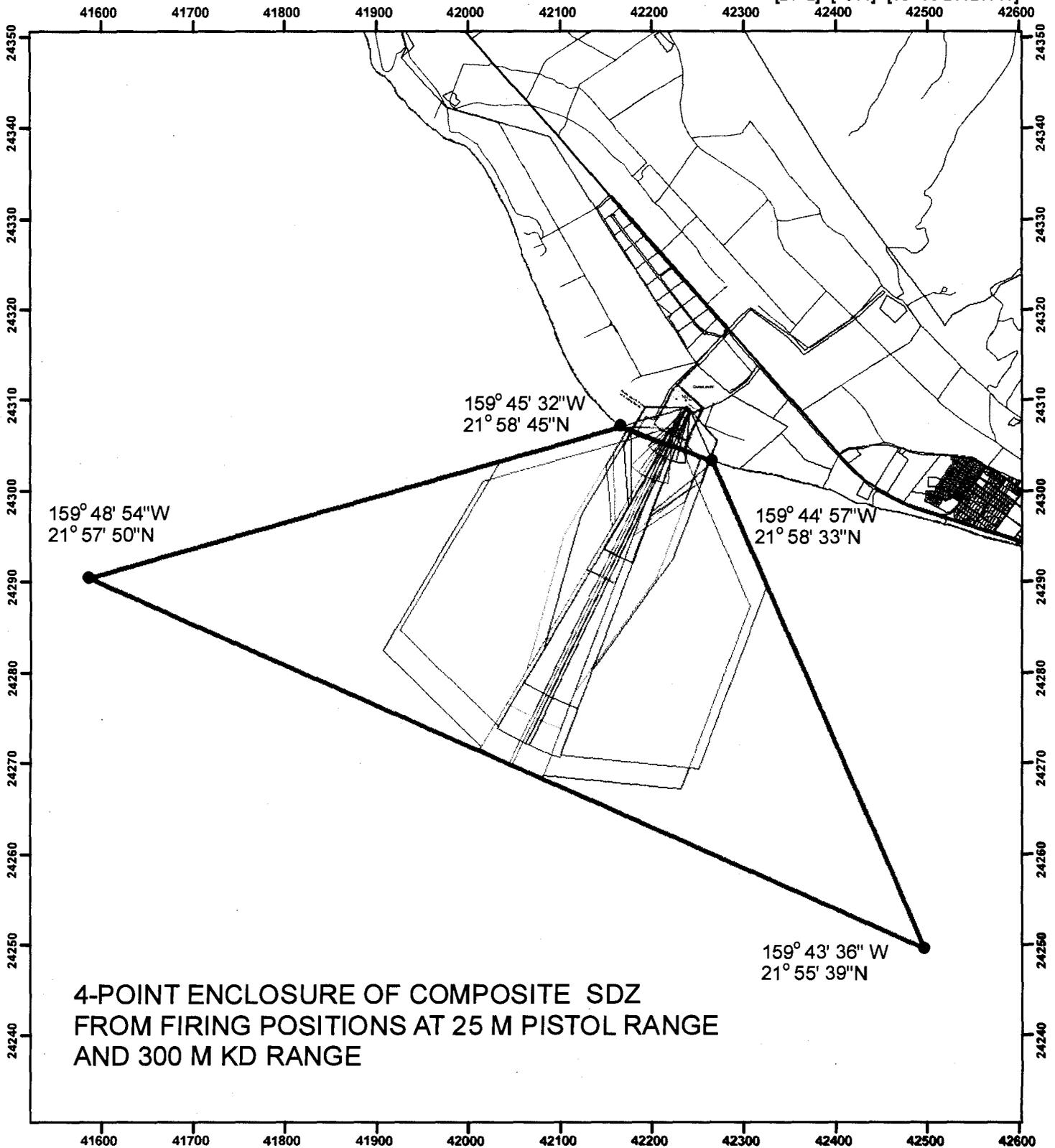
The decision whether to add a new danger zone will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof. Among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, (40 CFR Part 230).

**COMMENT AND REVIEW PERIOD:** Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether it would be in the public interest to authorize this proposal. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and reference number as shown below. All e-mail comments should be sent to Farley.K.Watanabe@usace.army.mil. Conventional mail comments should be sent U.S. Army Corps of Engineers, Regulatory Branch, Building 230, Ft. Shafter, HI 96858 or by fax at 808-835-4126. Both conventional mail and e-mail comments must include the permit applicant's name and reference number, as shown below, and the commenter's name, address, and phone number. All comments whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration. Please include the following name and reference number: **POH-2012-00241.**

A map is attached to this Public Notice.

# 15A65- TS KEKAHA WETS

EDITION SERIES SHEET  
[2012] [1011] [15A65-20121011]



**4-POINT ENCLOSURE OF COMPOSITE SDZ  
FROM FIRING POSITIONS AT 25 M PISTOL RANGE  
AND 300 M KD RANGE**

## LEGEND

<b>INSTALLATION</b>		<b>RELIEF</b>	
Firing point, Targetpoint		Spot elevations, Highest, Normal	
Fence line		Index contour, Interval (100-ft)	
Building, Ammo. storage, Bem.		Depression contour	
SDZ area, Cantonment area		<b>DRAINAGE</b>	
Range area, Airspace		Streams: Perennial, Non-Perennial	
Built-up area: dense, sparse		Intermittent, Abandoned	
<b>ROADS</b>		Marsh, Swamp, Wetland	
Primary, all weather, hard surface		<b>VEGETATION</b>	
Secondary, all weather, hard surface		Grass, Shrub, Forest	
Tertiary, track, unpaved		<b>MISCELLANEOUS FEATURES</b>	
<b>BOUNDARIES</b>		Located object, flagpole	
TMK Parcel		Mines: Active, Abandoned	
Coastline		Power line, Pipeline, Comm. line	
Reservation: Military			

0 0.5 1 2 3 4 Kilometers

1:60,000 NAD 83 / WGS 84

GRID NORTH  
N

EO 1794  
68 Acres  
TMK  
4-1-2-002:021

